



November 16, 2010

Phil White
Law Offices of Wilson & White
P.O. Box 310
100 Main Street
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RE: Jurisdictional Opinion #7-271
Boundary Line Dispute Resolution
Lawandi - Lucas
Eagle Point, Derby

Dear Phil,

This letter is a jurisdictional opinion issued pursuant to the provisions of 10 V.S.A. §6007(c) and Act 250 Rule 3, in response to your request dated November 2, 2010.

STATEMENT OF FACTS:

1. Two physically contiguous properties are located in the town of Derby in an area known as Eagle Point.
2. One of the parcels is owned by Jane Lucas, with interests also owned by Joseph Lucas and Gregory Lucas.
3. The second adjacent parcel is owned by Philip Lawandi and Anne Lawandi.
4. A resolution of a boundary dispute between the parties was settled via a court Stipulation and Order issued on July 20, 2004 by the Orleans Superior Court.
5. The referenced Order requires execution of a boundary line agreement. This includes an exchange of quit claim deeds conveying each other's interest in the land located on either side of the common property line.
6. The boundary line dispute resolution does not include construction of improvements for a commercial purpose "development" (as defined by Act 250).

APPLICABLE LAWS

Pursuant to 10 VSA §6001 (19) "Subdivision" means a tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on any lot, or within the jurisdictional area of the same district commission, within any continuous period of five years. In determining the number of lots, a lot shall be



counted if any portion is within five miles or within the jurisdictional area of the same district commission. The word "subdivision" shall not include a lot or lots created for the purpose of conveyance to the state or to a qualified organization, as defined under section 6301a of this title, if the land to be transferred includes and will preserve a segment of the Long Trail. The word "subdivision" shall not include a lot or lots created for the purpose of conveyance to the state or to a "qualified holder" of "conservation rights and interest," as those terms are defined in section 821 of this title. "Subdivision" shall also mean a tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into six or more lots, within a continuous period of five years, in a municipality which does not have duly adopted permanent zoning and subdivision bylaws.

The former Environmental Board issued a Declaratory Ruling (DR#118, Richard Kemmer, July 10, 1980) which addresses in pertinent part the question of whether or not a boundary line adjustment is lot creation for purpose of defining existence of a "subdivision" under Title 10 VSA §6001 (19). The Board identified that the purchase of land which is merged with adjoining residential land, not resulting in the creation of an additional discrete lot and upon which no development will occur, does not create a new lot.

ANALYSIS AND CONCLUSION

The subject Lawandi - Lucas boundary line dispute resolution does not include lot creation and is not a "subdivision" subject to Act 250 jurisdiction pursuant to 10 V.S.A. §6001 (19). An Act 250 Land Use Permit is not required for the exchange of quit claim deeds conveying the interests of land located on either side of the common property line.

Sincerely,

/s/ Kirsten Sultan

Kirsten Sultan, P.E., Coordinator
District #7 Environmental Commission

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(A). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. Any appeal of this decision must be filed with the clerk of the Environmental Division Superior Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Montpelier, VT 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the VRECP. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The Environmental Court mailing address is: Environmental Division Superior Court, 2418 Airport Road, Suite 1, Barre, VT 05641-8701. (Tel: 802-828-1660)